IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 1949 OF 1998

M/s.Beta Naphthol Ltd. & Ors. ...Applicants
V/s.
Indus Ind Bank & Anr. ...Respondent

Shri M.S. Mohite for Applicants.
Ms.Archana Panchal i/b. M/s.M. Dhruva & Co. for Respondent No.2.
Ms.Rajeshree M. Gadhavi, APP for the State.

CORAM : V.M. KANADE, J.

DATED : MARCH 14, 2006

P.C. :-

. Heard learned Counsel for the applicant and learned Counsel for the respondent.

. The applicants are challenging the order passed by the Metropolitan Magistrate who has issued process on a complaint filed by the respondent no.1 under Section 138 of the Negotiable Instruments Act.

2. It is submitted that so far as the applicant no.2 is concerned, the averments are made in the complaint stating that he was in charge of the day to day affairs of the said company. It is submitted that

applicant no.2 had resigned as the director of the company and the said fact was intimated to the Registrar of Companies who had in turn made the necessary changes. A xerox copy of the said Form No.32 has been annexed to the application. It is submitted that on this ground also, applicant no.2 was not concerned with the company at the time of the commission of the said alleged offence.

3. Learned Counsel appearing on behalf of respondent no.1 has submitted that the company had not informed the complainant about the resignation of applicant no.2 and therefore, they were not aware about the same.

4. Learned Counsel appearing on behalf of the applicant relied upon the Judgment of the Supreme Court in **Municipal Corporation of Delhi V/s. Ram Kishan Rohtagi & Ors. reported in (1983) 1 SCC page 1** and also the Judgment of the Supreme Court in the case of **S.M.S. Pharmaceuticals Ltd. V/s. Neeta Bhalla & Anr.** Learned Counsel for the applicant submitted that he is not

pressing the issuance of against the applicant nos.3 and 4.

5. In my view, the submissions made by the learned Counsel for the applicant will have to be accepted. The Supreme Court in a recent case has held that in order to make the provisions of Section 141 applicable to any person, it is essential that specific averments should be made in the complaint. A perusal of the complaint discloses that no such averment is made against applicant no.2. It is merely stated that he was Chairman of the company. The ratio of the judgment in the **Ram Kishan Rohtagi's case (supra)** and in the case of **S.M.S. Pharmaceuticals,** squarely apply to the facts of the present case.

6. In the result, Criminal Application is allowed qua applicant no.2. The process which is issued against applicant no.2 is quashed and set aside.

7. Since the issuance of process is not pressed against applicant nos.3 and 4, a case is remanded back

to the Court of Additional Chief Metropolitan Magistrate with a direction to decide the case, as expeditiously as possible and in any case, within a period of six months.

8. All questions which are raised by the applicants in this application and by respondent no.1 are kept open.

. Application is disposed of.

(V.M. Kanade, J.)